IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

WP(C).No. 13230 of 2006(Y)

OS.28/2006 OF SUB COURT, OTTAPPALAM.
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PETITIONER:

ANILKUMAR, S/O. GOPALAKRISHNAN,
KRISHNAMANDIRAM, PROPRIETOR,
JAY AUTO AGENCIES, PATTAMBI.

BY ADV. SRI.T.KRISHNAN UNNI.

RESPONDENT:

SURESH, S/O. SATHYANARAYANA MENON,
KUNIMMAL, PARANGATTIL, NADUVATTOM,
OTTAPALAM TALUK, PALAGHAT DISTRICT.

BY ADV. SRI.SANTHEEP ANKARATH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.13230/2006-Y:

APPENDIX

PETITIONER'S EXHIBIT:

EXT.P.1: COPY OF THE ORDER OF THE SUBORDINATE JUDGE OF OTTAPALAM IN I.A. 275/2006 IN O.S. 28/2006.

RESPONDENT'S EXHIBITS: **NIL.**

//TRUE COPY//

prv.

M.N. KRISHNAN, J.

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W.P.C. NO. 13230 OF 2006

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Dated this the 24th day of October, 2007.

J U D G M E N T

This writ petition is filed seeking to call for the records in O.S.28/06 and pass an order directing the Subordinate Judge, Ottapalam to intimate the Sub Registrar's Office that the attachment order passed in Ext.P1 application is not in force from 16.3.06 onwards and to conduct an enquiry with respect to the circumstances under which such an intimation was send by the office of the Central Nazir. This Court called for a report from the Subordinate Judge, Ottapalam. He has reported that the Court passed an interim order of attachment till 16.3.06 and without extending the same on that day posted it for enquiry on 10.7.06. It is submitted that since the interim stay of attachment was not extended, the defendant's counsel filed intimation batta in order to intimate the Sub Registrar's Office, Thrithala to the effect that the attachment was lifted on 16.3.06. Thereafter, on

representation from the plaintiff's counsel another intimation was sent to the Sub Registrar on 25.6.06 informing that the earlier intimation regarding the lifting of attachment was not correct as there was no specific order of lifting the attachment. I feel the procedure adopted had been totally unsatisfactory.

2. At the out set, I may like to state that the Apex Court as well as this Court had given guidelines how to pass an interim order of attachment because it affects the right of a party with respect to the property and it cannot be slightly be dealt with. There is a provision in the CPC itself under Order 38 Rule 5 that if an order is passed not in consonance with Order 38 Rule 1 to 4, the attachment will be void. So the order of attachment passed by the learned Subordinate Judge suffers from serious legal infirmity.

3. When an order of attachment is passed, the Court has a duty either to vacate it, extend it or confirm it. Without doing anything leaving the matter to the mercy of the Central Nazir is not a correct procedure adopted by the

Court. I also feel the Advocates of the plaintiff as well as defendant also contributed to the confusion by filing batta before the Nazir to intimate regarding the lifting of attachment. When by a judicial order an attachment is ordered, it is only desirable that the Court passes an order of lifting the attachment and make it mandatory to inform the concerned Sub Registrar's office regarding the lifting of attachment. The whole procedure adopted is quite unsatisfactory. I do not want to say anything further at this stage. But I direct the Court below, if it is pressed by the plaintiff, to consider the interim attachment application afresh in the light of the principles enunciated under Order 38 Rule 5 and pass an order after hearing both sides.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

ul/-